

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD ASH,) NO. CV 10-3887-SJO(E)
)
Petitioner,)
)
v.) ORDER OF DISMISSAL
)
JOHN MARSHALL, Warden,)
)
Respondent.)
)

Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody" on May 24, 2010. The Petition challenges the criminal judgment in Los Angeles Superior Court case number NA074507 (Petition at 2, 5). Petitioner previously challenged this same judgment in a prior habeas corpus petition filed in this Court. See Ash v. Marshall, CV 09-05491-SJO(E). On April 28, 2010, this Court entered Judgment in Ash v. Marshall, CV 00-05491-SJO(E), denying and dismissing the prior petition on the merits with prejudice.

The Court must dismiss the present Petition in accordance with 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and

1 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
2 a petitioner seeking to file a "second or successive" habeas petition
3 first obtain authorization from the court of appeals. See Burton v.
4 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
5 authorization from Court of Appeal before filing second or successive
6 petition, "the District Court was without jurisdiction to entertain
7 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
8 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
9 requires the permission of the court of appeals before 'a second or
10 successive habeas application under § 2254' may be commenced"). A
11 petition need not be repetitive to be "second or successive," within
12 the meaning of 28 U.S.C. section 2244(b). See, e.g., Calbert v.
13 Marshall, 2008 WL 649798, at *2-4 (C.D. Cal. Mar. 6, 2008); Miles v.
14 Mendoza-Powers, 2007 WL 4523987, at *2-3 (E.D. Cal. Dec. 19, 2007).
15 Petitioner evidently has not yet obtained authorization from the Ninth
16 Circuit Court of Appeals. Consequently, this Court cannot entertain
17 the present Petition. See Burton v. Stewart, 549 U.S. at 157.

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1 For all of the foregoing reasons, the Petition is denied and
2 dismissed without prejudice.¹


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4 LET JUDGMENT BE ENTERED ACCORDINGLY.

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6 DATED: May 27, 2010.

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10 S. JAMES OTERO
UNITED STATES DISTRICT JUDGE

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14 PRESENTED this 25th day of
15 May, 2010, by:

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18 CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

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27 ¹ In view of this disposition, Petitioner's request for
28 the appointment of counsel is denied. See Knaubert v. Goldsmith,
791 F.2d 722, 728-29 (9th Cir.), cert. denied, 479 U.S. 867
(1986).